7-10-1882

Letter from the Secretary of the Interior, in response to a resolution of the House of Representatives, relative to alleged excess in the certification of lands to certain railroad companies.

47TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { Ex. DOC. No. 223.

ALLEGED EXCESS IN CERTIFICATION OF LANDS TO CERTAIN RAILROAD COMPANIES.

LETTER

FROM THE

SECRETARY OF THE INTERIOR,

IN RESPONSE TO

A resolution of the House of Representatives, relative to alleged excess in the certification of lands to certain railroad companies.

JULY 10, 1882.—Referred to the Committee on the Judiciary and ordered to be printed.

DEPARTMENT OF THE INTERIOR,
Washington, July 10, 1882.

SIR: In answer to House resolution of the 6th ultimo, calling for facts in relation to lands certified to certain railroad companies in excess (according to the testimony of Mr. J. W. Le Barnes before the Senate committee) of the amount to which they were legally entitled, I have the honor to transmit herewith a copy of the report of the Commissioner of the General Land Office, of the 15th ultimo, on the subject. A copy of his letter to me of the 7th ultimo, on the same subject, is also transmitted herewith.

Very respectfully,

H. M. TELLER,
Secretary.

The HON. SPEAKER OF THE HOUSE OF REPRESENTATIVES.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., June 15, 1882.

SIR: I have the honor to acknowledge the receipt, by reference from you, of a resolution of the House of Representatives, passed on the 6th instant, as follows:

Whereas it is alleged in the testimony of J. W. Le Barnes, taken before a committee of the United States Senate, that certain land-grant railroads have received certificates for lands in excess of the amount due them by the acts granting the lands; Therefore, be it—

Resolved, That the Secretary of the Interior furnish the House all the facts in his department tending to show the truth or falsity of said allegations, and his recommendations, if in his opinion the same are well founded, for the purpose of reinvesting the title to the said lands in the United States and opening the same to homestead and pre-emption settlement.

In reply, I have to advise you that all the information in relation to the grants referred to in the testimony of Mr. Le Barnes that can be given without a complete adjustment of said grants is contained in my letter addressed to you on the 7th instant, in answer to an inquiry on the same subject made by Hon. L. E. Payson, a member of the Judiciary Committee of the House of Representatives.

In the case of the Sioux City and Saint Paul Railroad Company, a letter was, at the request of your predecessor, addressed to the governor of Iowa on the 7th of March last, asking him to indicate what action he would take with regard to surrendering the "patents issued to the State for the Sioux City and Saint Paul Company for lands which have not been earned by said company"; but, as heretofore reported, no reply has been received from said governor.

The Sioux City and Saint Paul Railroad was authorized by the act of May 12, 1864 (13 Stat., 72). The last proviso of section 4 of said act reads as follows:

> That said lands shall not in any manner be disposed of or encumbered, except as the same are patented under the provisions of this act; and should the State fail to complete said road[s] within five years after the ten years aforesaid, then the said lands undisposed of as aforesaid shall revert to the United States.

As nearly 27 miles of said road remains uncompleted, and as the excess of lands patented were not "patented under the provisions of the act" of May 12, 1864, I am of the opinion that judicial proceedings should be instituted for the recovery of said excess of lands. Like proceedings were recommended in my letter of April 14, 1882, as to the excess of lands certified for the Mobile and Girard Railroad.

I return herewith the copy of resolution referred to.

Very respectfully,

N. C. McFARLAND,
Commissioner.

Hon. H. M. TELLER.
Secretary of the Interior.

DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,
Washington, D. C., June 7, 1882.

SIR: I am in receipt, by reference from you, of a letter from Hon. L. E. Payson, dated the 17th ultimo, in which he says:

> Mr. Le Barnes, assistant law clerk to the Land Office, has recently stated, in testifying before the Senate Committee on Public Lands, that certain land-grant railroads have had from the public domain lands largely in excess of the amount to which they were entitled. The Judiciary Committee of the House have the general subject of unearned land grants before it, and instead of moving a resolution of inquiry as to the matter formally, I write you this. I would be pleased to be advised as to the facts as claimed by the officers of the Land Office as to the evidence of Mr. Le Barnes They are fully advised of what he has testified to I know. The information I desire for the use of my committee, and, of course, it should be verified by reference to the records.

I understand Mr. Payson's inquiry to refer to the following-named roads, viz:

Cedar Rapids and Missouri River (Iowa).
Sioux City and Saint Paul (Iowa).
Saint Paul and Sioux City (Minnesota).
First Division Saint Paul and Pacific (Minnesota).
Iowa Falls and Sioux City (Iowa).

Winona and Saint Peter (Minnesota).
Lake Superior and Mississippi (Minnesota).
West Wisconsin (Wisconsin).
Alabama and Chattanooga (Alabama).
Mobile and Girard (Alabama).
Coosa and Tennessee (Alabama).
Pensacola and Georgia (Florida).
North Louisiana and Texas (Louisiana).
Iowa Central Air Line.

In order to enable you to properly understand the figures hereinafter presented, I deem it necessary to explain, as clearly as is possible in a written communication, the method followed in determining the precise tracts of land which inure to any State for the benefit of a particular grant.

After a map of the definite location of the line of route of any land-grant road is filed in this office, diagrams are prepared generally upon a scale of 4 miles to 1 inch, each township being thus 1¼ inches square. The townships are divided into thirty-six sections, and each section into sixteen quarter quarter-sections of 40 acres, thus dividing each township into 576 subdivisions of 40 acres each.

The located line of route is accurately laid down upon such diagram. Where a grant is of the alternate odd-numbered sections for six sections in width on each side of the road, a line is drawn with mathematical accuracy *on each side* of the line of route in such manner that said exterior line shall be just six miles distant from any and every point on either side of the road. If a road followed a straight line it would be a simple matter to fix the limits of its grant.

Nearly all of the land-grant roads, however, follow irregular lines, that is, there are more or less bends or curves in the road; therefore a system was adopted by this department and office of fixing the lateral limits of a road by making consecutive circles (representing a diameter of six miles) along the line of road, and drawing lines tangent to such circles in such manner that the line of lateral limits on each side might be so adjusted as to be equidistant from every portion of the road. Where the line of lateral limit (which is a temporary line made in pencil) so drawn embraces the greater portion of the smallest legal subdivision (40 acres) of a section, the entire subdivision is awarded to the road. Where the minor portion only is embraced within such lateral line, the entire subdivision is excluded. A fixed and permanent line is then drawn including and excluding the proper tracts accordingly. The limits within which indemnity may be taken are fixed in the same manner. I inclose a diagram, marked A, illustrating the method described. An examination of said diagram will show that a road by this system could not, even if all the land in odd sections within its limits were subject to its grant, receive the *exact* amount of six sections (3,840 acres) per mile, but that in every instance it would receive a trifle less, the loss ranging from one-tenth of one per cent. in ordinary cases to one per cent. in extreme cases. The loss on a line of road similar to that on the inclosed diagram being 1.09 per cent.

There are other causes which operate to prevent a road from getting the full number of sections per mile that may be named in a grant. Two roads, for the benefit of which a grant is made by the same act, may intersect each other. In such case each road receives a moiety of the land embraced in the conflicting limits. Where roads receiving a grant under different acts intersect, the earliest grant takes the land within such conflicting limits to the exclusion of the road for which the

later grant was made. Military reservations are in all instances excepted from the operation of a grant. Indian reservations in Minnesota are excluded by the act of March 3, 1857, so long as the Indian title remains unextinguished. Under the additional grant of March 3, 1865, to Minnesota, such reservations are excluded entirely. Private grants are also excluded from railroad grants, but indemnity has been allowed in Florida in such cases. Where a grant is taken up for adjustment, all these elements have to be carefully considered, and the status of every 40-acre tract within the limits of a grant determined. But few grants have yet been fully adjusted, owing to the fact that the majority of the force of the railroad division of this office has been engaged in the settlement of contests arising between settlers and railroad companies. To adjust the grants above referred to would require more than a year's labor of the entire force available for such purpose.

In making the statement asked for, I shall therefore adopt the plan which, in my opinion, most nearly approximates the result that would be obtained by an accurate adjustment of each grant.

It must also be understood that none of the grants in question have been adjusted; also, that there are mooted questions relative to the true intent of some of the grants, and that the final decision of such questions may materially reduce the amounts herein stated.

Where the grant is a grant of quantity "to the amount of" so many sections per mile, no deductions are made for any cause. Each statement, however, made with reference to a particular road, exhibits as nearly as practicable, and following the general plan herein adopted, such amounts as would inure to the road under the present rules of the department and office. All the earlier grants made for the benefit of railroads have been held to be grants *in presenti;* that title to the sections granted passed by the act, and that when the definite location of a road was made the title of the State acquired precision, and at once attached to the land.

Congress relied in all cases upon the good faith of the State to see that the lands were disposed of in the manner provided in each act, and that the proceeds of the lands granted were applied for the purposes contemplated by such act. Accordingly, in nearly all the grants made previous to 1864, immediately upon the location of the roads and the determination of the limits of a grant, this office and the department certified, in whole, to the States, all the vacant lands within the granted limits of each road, and such land within the indemnity limits as was required to make the full complement of the grant for the number of miles of located road, generally without any deductions for reservations, conflicting limits, or other causes. It was therefore left to each State to fulfill the conditions imposed by a grant, and to so fulfill them as to avoid the penalty of forfeiture, and in making sales or disposals of the lands granted to save her vendees from being the recipients of invalid titles.

In all the grants hereinafter referred to, except that for the Sioux City and Saint Paul, and Saint Paul, Lake Superior and Mississippi Railroads, the States were permitted to sell one hundred and twenty sections of land, 76,800 acres, to be selected *anywhere on the line* within a continuous twenty miles in advance of the construction of any portion of a road named in the granting act. The validity of such a sale was affirmed by the United States Supreme Court in the case of Railroad Land Company *vs.* Courtright, October term, 1874 (21 Wallace, 310). It will therefore be observed that, generally, where roads lack twenty miles or more of completion, the *excess* of acres certified over the amount earned by construction may properly and *legally* be 76,800 acres, or 120

sections of land, and that this excess may be taken from lands anywhere along the located line within a continuous twenty miles.

The grant to the State of Iowa for the benefit of the Cedar Rapids and Missouri River Railroad is made by the act of May 15, 1856 (11 Stat., p. 9), and the act of June 2, 1864 (13 Stat., p. 95). This grant is peculiar in some respects, and therefore needs explanation.

The first act provides for a road "from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa; thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri River," and grants therefor every alternate section of land designated by odd numbers for six sections in width on each side of said road. The usual indemnity provision is made for lands within the granted limits that were sold, or to which the right of pre-emption had attached prior to the definite location of the road.

Lands reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement, or for any purpose whatsoever, are excluded from the operation of the act, except that right of way is granted through such reservations, subject to the approval of the President of the United States.

On July 14, 1856, the State accepted the grant and conferred it upon the Iowa Central Air Line Railroad Company. Said road was finally and definitely located from the Mississippi to the Missouri River on September 12, 1856, and on October 31, 1856, the map of definite location was filed in this office. Said road was 346¾ miles in length, which (miles), multiplied by 3,840 (the acres per mile granted), would give the total grant as 1,331,520 acres, subject to deductions for curves, reservations, and other causes above referred to.

(NOTE.—The entire loss by curves in the 346¾ miles would be about 1,950 acres, or less than two-tenths of one per cent., as shown on the diagram by which the grant is adjusted.)

The Iowa Central Air Line Railroad Company did a large amount of grading on the located line, principally between Lyons and Maquoketa but they never constructed any portion of said line.

Up to March 17, 1860, there were 665,687.34 acres of land lying along various portions of the road certified to the State for the benefit of the Iowa Central Air Line Railroad Company. Of this amount the State conveyed to said company 63,106 acres, a part of the first one hundred and twenty sections authorized by the act of 1856 to be sold in advance of construction. This land was situate west of Cedar Rapids. The company sold this land and the sale was affirmed by the decision of the United States Supreme Court in the Courtright case hereinbefore referred to. The legislature of Iowa, by act of March 17, 1860, resumed control of the land embraced in the grant, and by act of March 26, 1860, granted the same to the Cedar Rapids and Missouri River Railroad Company upon certain conditions. Prior to this date the Chicago, Iowa and Nebraska Company had built a road commencing at Clinton, on the Mississippi River, only 2.41 miles from Lyons City, to Cedar Rapids.

When the State made the grant to the Cedar Rapids and Missouri River Railroad Company, this fact was recognized, and the State provided that the lands were to be used for and devoted by the Cedar Rapids and Missouri River Railroad Company to the building of a road from Cedar Rapids or Marion to the Missouri River.

This is all the State did, conceding it had the power to divert the

lands, so to speak, to the construction of a railroad upon a different route from that mentioned in the act.

(NOTE.—Such right is affirmed in effect by the United States Supreme Court in the case of Baker *vs.* Gee, December term, 1863, 1 Wall., 333.)

It has uniformly been considered by this office that by the act of June 2, 1864, hereinafter quoted in part, Congress assented to the disposition made by the State of the lands along the line of the original route; in other words, that the lands along the 346¾ miles of the original line were to be used for the construction of a modified line or road 72.74 miles shorter, thus making the grant equal to about 4,860 acres per mile for constructed road. Previous to June 2, 1864, and after March 26, 1860, the Cedar Rapids and Missouri River Railroad Company constructed 70 miles of road between Cedar Rapids and Marshalltown, and during that time 109,756.85 acres were approved to the State under the act of May 15, 1856.

(NOTE.—The United States Supreme Court, December term, 1866, in the case of Wolcott *vs.* Des Moines Navigation and Railroad Company, decided that all of said 109,756.85 acres inured to the Des Moines improvement grant by act of August 8, 1846.)

By the fourth section of the act of June 2, 1864, it was provided—

> That the Cedar Rapids and Missouri River Railroad Company, a corporation established under the laws of the State of Iowa, and to which the State granted a portion of the land mentioned in the title to this act, may modify or change the uncompleted portion of its line, as shown by the map thereof now on file in the General Land Office of the United States, so as to secure a better and more expeditious line to the Missouri River, and to a connection with the Iowa branch of the Union Pacific Railroad; and for the purpose of facilitating the more immediate construction of a line of railroads across the State of Iowa, to connect with the Iowa branch of the Union Pacific Railroad Company, aforesaid, the said Cedar Rapids and Missouri River Railroad Company is hereby authorized to connect its line by a branch with the line of the Mississippi and Missouri Railroad Company, and the said Cedar Rapids and Missouri River Railroad Company shall be entitled for such modified line to the same lands and to the same amount of lands per mile, and for such connecting branch to the same amount of land per mile, as originally granted to aid in the construction of its main line, subject to the conditions and forfeitures mentioned in the original grant, and, for the said purpose, right of way through the public lands of the United States is hereby granted to said company.

The said section of the act also required the company to file in this office a map of the modified main line and connecting line as soon as located. Said section also directs the Secretary of the Interior to reserve and cause to be certified and conveyed to the company from time to time as the work progressed, out of any public lands not sold, reserved, or otherwise disposed of, or to which a pre-emption right, or right of homestead settlement, has not attached, and on which a *bona fide* settlement and improvement has not been made under color of title derived from the United States, or the State of Iowa, *within* 15 *miles of the original main line*—

> An amount of land equal to that originally authorized to be granted to aid in the construction of the said road by the act to which this is an amendment. And if the amount of lands per mile granted, or intended to be granted, by the original act to said in the construction of said railroad shall not be found within the limits of the 15 miles therein prescribed, then selections may be made along said modified line and connecting branch within 20 miles thereof.

It also provides for a branch line from the main line to Onawa City, with the same grant of lands to be selected from the unappropriated lands *anywhere* within 20 miles of the main line and branch; also for a branch from the town of Lyons, in Iowa, "to connect with the main line in or west of the town of Clinton in said State," and directs the Secretary of the Interior to reserve a quantity of land "sufficient, in the

opinion of the governor of Iowa, to secure the construction" of such branch.

(NOTE.—One hundred and twenty sections of land were reserved for this purpose.)

As before stated, it has always been understood by this office that the Cedar Rapids and Missouri River Railroad Company was the successor of the Iowa Central Railroad Company, and as such entitled to all the lands, rights, and privileges of the former company, and the lands certified by this office to the State of Iowa for the latter company are regarded as inuring to the former company. The lands were certified to the State (prior to June 2, 1864), subject to her disposal; and while the Cedar Rapids and Missouri River Railroad Company did not build any road (except the Lyons branch, 2.41 miles) east of Cedar Rapids, it has received the benefit of all the lands certified to the State under the act of 1856, except 172,862.85 acres hereinbefore referred to, viz, 63,106 + 109,756.85.

The lands withdrawn on the line of the original route are still reserved for the benefit of the grant, and the lands within 6 miles of said line are, and have always been, held at double minimum price.

It will be noticed the act of June 2, 1864, makes the grant to a corporation and not to the State direct except upon failure of the corporation to construct the road as provided in section 8 of the act. Whether or not the acts of 1856 and 1864 have been properly construed by this office, is not a question necessary to be determined in this report.

The total length of the main line and branch from Cedar Rapids to the Missouri River is 271.6 miles, and of the Lyons branch 2.41 miles, making 274.1 miles of road built in compliance with the act of 1864.

A branch road, 6 miles in length, was built by the Cedar Rapids and Missouri River Railroad Company, from Missouri Valley Junction, to connect with the Sioux City and Pacific, running through Onawa; but no grant was claimed by the company therefor.

Giving the company six sections, or 3,840 acres per mile for the original line of 346¾ miles, we find the grant to be in round numbers 1,331,520 acres. The line of constructed road, however, runs through the limits of the Des Moines improvement grant made by act of July 12, 1862, but the lands within 5 miles on each side of said river were at the date of the grant for the Iowa Central Air Line (May 15, 1856) reserved for the benefit of the Des Moines improvement grant by act of August 8, 1846. Whether the latter grant (of August 8, 1846) extended above the Raccoon Fork, and whether the reservation was properly made, has been the subject of almost endless correspondence and litigation. It has not been determined whether the act of 1864 gives the Cedar Rapids Company indemnity for the lands lost by said reservation.

There are 49,520 acres in the conflicting limits of the Cedar Rapids road and the Des Moines improvement grant. If no indemnity is allowed for said 49,520 acres, the grant would be 1,331,520 — 49,520, or 1,282,000 acres.

The State of Iowa is charged on the records of this office with 1,032,363.28 acres certified under the acts of May 15, 1856, and June 2, 1864, for the benefit of the road in question.

This would show an apparent deficiency of 249,636.72 acres required to satisfy the grant, and, if indemnity is allowed for said 49,520 acres, an apparent deficiency of 299,156.72 acres.

Either of said deficiencies would be slightly reduced by an accurate adjustment of the grant by limits as shown on the diagram of lands

embraced within the grant. There are no losses to this road by conflicting limits of grants to other roads.

If the former rule of the office is changed, and no grant is allowed east of Cedar Rapids, and no indemnity for lands in limits of Des Moines improvement grant, the State has received 38,939.28 acres more than she would be entitled to under such a construction of the granting act.

SIOUX CITY AND SAINT PAUL RAILROAD.

By act of Congress approved May 12, 1864 (13 Stat., 72), a grant was made to the State of Iowa for the construction of a railroad from Sioux City in said State to the south line of Minnesota of every alternate section of land, designated by odd numbers, for ten sections in width on each side of said road, and provision was made for indemnity for lands lost within the granted limits to be taken within ten additional miles. The lands were to be patented only as the road was constructed, at the rate of 100 sections of land for each section of road 10 miles in length, and if the road was not completed within 10 years from the date of the acceptance of the grant by the company, the lands granted and not patented should revert to the State for the purpose of securing the completion of the road. It was further provided that if the road was not completed by the State in 15 years from the date of said acceptance, the lands undisposed of should revert to the United States.

On April 3, 1866, the State accepted the grant and conferred it upon the Sioux City and Saint Paul Railroad Company, and said company accepted the grant September 20, 1866.

The line located by said company was 83 miles and 52 rods in length, and a diagram of withdrawal was prepared accordingly and the lands withdrawn August 26, 1867. Only 56¼ miles of the road have been constructed. The area of the grant for such length of road at 10 sections, or 6,400 acres per mile, is—*without deductions* for any cause—360,000 acres. There have been patented to the State of Iowa, for the benefit of said road, the following amounts of land:

	Acres.
October 16, 1872	191,464.04
June 17, 1873	205,374.76
January 25, 1875	10,911.41
June 4, 1877	160.00
Total	407,910.21

The excess, therefore, of lands patented to the State for this road over the amount it was possible for the company to have earned under the most favorable circumstances, without deductions, by the construction of 56¼ miles of road is 47,910.21 acres. It is clear that this amount was erroneously patented to the State, as reported to you by my letter of January 12, 1882. It is understood, however, though unofficially, that some 85,000 acres of the amount of lands so patented have been withheld from the company by the State.

On the 7th of March last, at the request of your predecessor, I addressed a letter to the governor of Iowa asking him to indicate what action he would take with regard to surrendering the "patents issued to the State for the Sioux City and Saint Paul Company for lands which have not been earned by said company." No reply from the governor has yet been received.

The granted limits of the McGregor Western Railroad conflict with the granted limits of the Sioux City and Saint Paul Railroad, so that

the actual area of the grant would be about 35,500 acres less than 360,000 acres, or 324,500 acres, thus making the probable excess patented to the State 83,410.21 acres, which is very nearly equal to the amount (85,000 acres) of lands withheld by the State from the company. It will be observed that the patents issued to the State in this case for all the land except 11,071.41 acres were issued prior to June 18, 1873, nearly nine years ago, and that the last patent was issued June 4, 1877, or five years ago. By the act of March 3, 1857, a grant was made to the then Territory of Minnesota for the construction of a railroad now known as the—

SAINT PAUL AND SIOUX CITY RAILROAD,

running from Saint Paul and Saint Anthony to the southern boundary of the Territory in the direction of the mouth of the Big Sioux River. The grant was of every alternate section of land, designated by odd numbers, for six sections in width on each side of the road. Indemnity is also provided, to be taken within 15 miles of the line of road, of "so much land, in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold, or otherwise appropriated, or to which the rights of pre-emption have attached" prior to date of definite location.

By act of May 12, 1864, the grant for this road is increased—

Four additional alternate sections of land per mile, to be selected upon the same conditions, restrictions, and limitations as are contained in the act [of March 3, 1857, and providing that the land to be so located by virtue of the act] may be selected within twenty miles of the line of said road, but in no case at a greater distance therefrom.

Said company located 199¼ miles of road upon which withdrawals were made under the provisions of the grant.

The area of the grant, without deductions, at the rate of ten sections, or 6,400 acres, per mile, for 199¼ miles of located road would be 1,275,200 acres. The amount patented or certified is 1,146,738.56 acres, leaving a deficiency of 128,461.44 acres.

From this amount there will have to be deducted, when ascertained, the proper proportion of a large amount of lands lying within the six-mile conflicting limits of this road and other roads provided for by the act of March 3, 1857; also lands included within the limits of the former Winnebago Indian Reservation.

THE FIRST DIVISION OF SAINT PAUL AND PACIFIC RAILROAD

was authorized by the act of March 3, 1857, above referred to, with the same grant of lands, six sections per mile, and indemnity for lands sold, &c., to be selected within 15 miles on either side of the line of road.

The grant was afterwards, by act of March 3, 1865, increased to ten sections per mile, with indemnity to be taken within twenty miles of the line of road. Said company have constructed 230.80 miles in accordance with the provisions of the grant, however; the line as located and upon which withdrawals were made is but 227¼ miles in length.

The area of the grant, without deductions at the rate of ten sections, or 6,400 acres, per mile for 227¼ miles, would be 1,454,400 acres. Less for 10 miles constructed prior to March 3, 1865, and only entitled to six sections per mile, 25,600 acres, leaving the area of the grant 1,428,800 acres; amount certified or patented to date, 1,251,046.14 acres; deficiency, 177,753.86 acres.

From this amount there will have to be deducted, when ascertained,

the proper proportion of such amount of lands as lie within the conflicting limits of this road and other roads authorized by the act of March 3, 1857.

It is probable that an accurate adjustment of the grant will show a deficiency of lands required to satisfy the grant.

THE IOWA FALLS AND SIOUX CITY RAILROAD

was authorized by the act of May 15, 1856, which provided for a road from Dubuque, Iowa, to a point on the Missouri River near Sioux City, granting to the State of Iowa for that purpose every alternate section of land, designated by odd numbers, for six sections in width on each side of the line of road, with indemnity to be taken within 15 miles on each side of said line.

Lands reserved to the United States by any act of Congress, or in any other manner by competent authority, were excepted from the operation of the act.

The line of road as located is 327.53, but as constructed is 326.58 miles.

The area of the grant at six sections, or 3,840 acres, per mile, would be, without deductions, 1,254,067.20 acres; from this should be deducted the lands in limits of grant to the Des Moines improvement, amounting to 59,590.49 acres; area of grant, 1,194,476.71 acres; amount of lands certified or patented under the grant and properly charged to the road, 1,155,956.54 acres; deficiency, 38,520.17 acres.

This amount will not be decreased by the conflicting limits of any other road. The limits of the Sioux City and Saint Paul Railroad conflict with the limits of this road (Iowa Falls and Sioux City), but as the Sioux City and Saint Paul grant is a later grant (May 12, 1864), it does not affect the grant for the Iowa Falls and Sioux City Railroad.

THE WINONA AND SAINT PETER RAILROAD

was authorized, and a grant made to the then Territory of Minnesota for the same, by the act of March 3, 1857, and the grant was extended by the act of March 3, 1865, hereinbefore referred to. The two grants aggregated ten sections per mile, with indemnity to be taken within 20 miles from either side of the line of road. Reservations are excepted from the operation of the grant.

The company constructed 323.56 miles, but the line as located and upon which lands were withdrawn is 319¼ miles in length.

The area of the grant, without deductions, at ten sections, or 6,400 acres, per mile, for 319¼ miles, would be 2,043,200 acres. Less for 50 miles constructed prior to act of March 3, 1865, and only entitled to six sections per mile, 128,000 acres; area of grant, 1,915,200 acres; amount certified or patented, 1,668,787.90 acres; deficiency, 246,412.10 acres.

From this amount there will be deducted, upon an accurate adjustment of the grant, a large amount of land in the conflicting limits of other roads authorized by the act of March 3, 1857; also land within the Winnebago and Sioux Indian Reservations.

The statements as to area of grant for the last four roads above named, to wit, Saint Paul and Sioux City, First Division Saint Paul and Pacific, Iowa Falls and Sioux City, and Winona and Saint Peter, differ materially from estimates made by this office in 1865, and published in the annual report for that year and for several years thereafter, which estimates attempted to show the "quantities inuring under the grants," after necessary deductions for conflicting limits, &c., were made.

THE LAKE SUPERIOR AND MISSISSIPPI RAILROAD

was authorized by the act of May 5, 1864, which granted to the State of Minnesota, for the purpose of aiding in the construction of a railroad in said State from the city of Saint Paul to the head of Lake Superior—

Every alternate section of land designated by odd numbers, *to the amount of* five alternate sections per mile on each side of the said railroad on the line thereof, within the State of Minnesota; but in case it shall appear that the United States have, when the line or route of said road is definitely fixed, sold, *appropriated, reserved*, or otherwise disposed of any sections or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same,

indemnity was provided therefor, to be taken within 20 miles on either side of the line of road. By the act of July 13, 1866, it was provided—

That in case it shall appear, when the line of the Lake Superior and Mississippi Railroad is definitely located, that the quantity of land intended to be granted by the said act in aid of the construction of the said road shall be deficient by reason of the line thereof running near the boundary line of the said State of Minnesota, the said company shall be entitled to take from other public lands of the United States within 30 miles of the west line of said road such an amount as shall make up such deficiency: *Provided*, That the same shall be taken in alternate odd sections, as provided for in said act (May 5, 1864).

This grant appears to be a grant of absolute quantity without deductions for any cause, if the amount can be found within said 30 miles. The company constructed 154.42 miles, which would entitle them, at the rate of ten sections, or 6,400 acres, per mile, to 988,288 acres. Amount patented or certified, 860,564.09 acres; deficiency, 127,723.91 acres.

THE WEST WISCONSIN RAILROAD

was authorized by the act of June 3, 1856, and a grant made to the State of Wisconsin therefor of six sections per mile, with indemnity to be taken within 15 miles of the line of road.

This grant was subsequently, by act of May 5, 1864, increased to ten sections per mile, from Tomah to Saint Croix River, with indemnity to be taken within 20 miles on either side of the line of road. The company constructed 244 miles of road—100 miles from Madison to Tomah is entitled to only six sections per mile, or 384,000 acres; 144 miles from Tomah to Saint Croix is entitled to ten sections per mile, or 921,600 acres; or, without deduction, a total of 1,305,600 acres; amount patented or certified, 824,866 acres; deficiency, 462,734 acres.

This amount would be largely reduced by deducting the amount of lands in the conflicting limits of this and other roads.

It is not probable, however, that said deductions will exceed 462,734 acres.

THE ALABAMA AND CHATTANOOGA RAILROAD

was authorized by that portion of the act of June 3, 1856, making a grant to the State of Alabama for the construction of certain railroads, which provides for a road from Gadsden to connect with the Georgia and Tennessee and Tennessee line of railroads through Chattooga, Wills, and Lookout Valleys; and also for a road "from near Gadsden to some point on the Alabama and Mississippi State line, in the direction to the Mobile and Ohio Railroad."

Said roads were consolidated under the name of the Alabama and Chattanooga Railroad, and 246 miles of road have been constructed in accordance with the granting act.

The grant was "every alternate section of land designated by odd

numbers for six sections in width on each side of said roads," and the usual provision was made in the act for indemnity to be taken within 15 miles on either side of the line of road.

The area of the grant, without deductions, would be, for 246 miles, 944,640 acres; amount patented or certified, 558,253.04 acres; total, 386,386.96 acres. One list, aggregating 43,717.38 acres, has been approved to the State for the joint benefit of this road and others with which it conflicts. If it is all awarded to the Alabama and Chattanooga Railroad, the deficiency in the grant will be 342,669.58 acres.

This amount will be somewhat reduced by the conflicting limits of other roads in Alabama, provided for in the act of June 3, 1856; however, it is not probable that the grant for this road can be fully satisfied, as the quantity of vacant land within the limits of the road is inconsiderable. I do not understand Mr. Le Barnes to claim that there has been any excess certified for the last three roads named.

THE MOBILE AND GIRARD RAILROAD .

was authorized by the sixth section of the act of June 3, 1856, above referred to. The grant for said road was "every alternate section of land designated by odd numbers for six sections in width on each side" of the road. Indemnity is provided for "such lands as the United States have sold, or otherwise appropriated, or to which the rights of pre-emption have attached" prior to the date of definite location of the road, such indemnity to be taken within 15 miles on either side of the line of road. Said act provided "that a quantity of land, not exceeding 120 sections" (76,800 acres), "and included within 20 continuous miles of" said road, might be sold in advance of the construction of any portion of the road, and that the remainder of the lands should be sold only as the road progressed, at the rate of 120 sections for each 20 miles completed, and only then after the governor of the State should certify to the Secretary of the Interior that such a section was completed.

A map of definite location of the road from Girard to Blakely, on the Mobile Bay, a distance of 223.6 miles, was filed in this office June 1, 1858.

Following the rule hereinbefore referred to, which obtained at the date the grant was made, nearly all the vacant lands within the granted limits of the road, and such lands within the indemnity limits as were required to make as nearly as possible the full complement of the grant for the number of miles of located road, were approved or certified to the State. Between April 26, 1860, and January 3, 1861 (inclusive), there were 504,145.86 acres approved to the State for the benefit of the road. Of the land so certified, 208,767 acres were within the granted limits and 295,377 acres within the indemnity limits, as reported to you by my letter of April 14, 1882, relative to this road.

There is no evidence on file in this office or in the department of the construction of any portion of this road, yet it is known unofficially that a railroad has been constructed and is in operation from Girard to Troy, a distance of 84 miles. It has been held by this office that if this portion of the road was constructed in time, the company would be entitled to 322,560 acres of land. The total amount of land certified to the State for said road and lying between the terminal points (Girard and Troy) of the constructed road was, as reported to you in said letter of April 14, 1882, 21,723.31 acres. Of this amount 10,928.88 acres was in the granted limits and 10,796.84 in the indemnity limits of the road.

Under the rules of this office which were in force July 30, 1858, and

for many years thereafter, where there were no vacant lands for indemnity near the lands lost in place, the indemnity land selections could be advanced to the terminus of the road. If, therefore, the 84 miles were constructed in time, the certification to the State of indemnity, 295,377 acres, and of granted lands, 10,928.88 acres, or a total of 306,305.88 acres, would be strictly within the rules of the office, as such amount would be less than the full grant for 84 miles of road.

If to this amount we add the 120 sections or 76,800 acres which the State could sell in advance of construction, we find that 383,105.88 acres would be the extent of the disposals that could properly be made under the granting act, even if 84 miles of road had been properly constructed in compliance with the terms of the act.

It does not appear, however, that any portion of the land certified to the State for the benefit of this road had been sold or used for the purpose of the road at the date of the expiration of time allowed for construction, neither does it appear that any portion of the land had been certified over to the railroad company at that period. In view of the fact that there were but 21,723.31 acres of public land lying opposite the 84 miles of road referred to, included in the lists certified to the State, and the further fact that no official report whatever of the construction of any portion of the road was on file, or had been filed in this office, I recommended to you in my letter of April 14, 1882, that judicial proceedings should be instituted for the recovery of 482,422.65 acres, the difference between 21,723.31 acres and the total amount certified.

COOSA AND TENNESSEE RAILROAD.

This road was authorized by the same act (June 3, 1856) as provided for the Mobile and Girard Railroad. The grant and conditions thereof were the same. A map of definite location showing 36½ miles was filed in this office January 18, 1859.

No portion of the road has ever been constructed. Under the provisions of the act 67,784.96 acres were approved to the State for the benefit of the road. Whether the State took advantage of the provision of the act allowing them to sell 120 sections of land (76,800 acres) for the benefit of the road before the construction of any portion thereof, is not known to this office.

THE PENSACOLA AND GEORGIA RAILROAD

was authorized by the act of May 17, 1856, making a grant to the State of Florida for the construction of railroads almost identical in its provisions with that of the grant of June 3, 1856, to Alabama. The grant provided for a road "from Saint John's River, at Jacksonville, to the waters of Escambia Bay, at or near Pensacola."

The Pensacola and Georgia Railroad Company was organized to construct that portion of the road running from Lake City to Pensacola, and the grant for that portion of the road conferred upon them by the State. Said company located 307 miles of road prior to May 30, 1858. No evidence of the construction of any portion of this road has been filed in this office, but the road is believed to be constructed and in operation from Lake City to Chattahoochee River, a distance of about 150 miles. If said 150 miles were constructed within the proper period, the amount the State could properly dispose of would be 652,800 acres, including the 76,800 acres that could be sold in advance of construction.

Prior to October 30, 1860, under the rules then existing, 1,275,579.52

acres were approved to the State for the benefit of the road "from Saint John's River, at Jacksonville, to the waters of Escambia Bay, at or near Pensacola." If said amount was sold for the benefit of, or transferred to, said road, the amount disposed of would exceed by 622,779.52 acres the amount that could be legally disposed of upon the construction of 150 miles of road.

This office has no information as to the disposition of the lands made by Florida. It is possible that some portion of the land was sold for the benefit of the company (Florida, Atlantic and Gulf Central) which constructed, or is believed to have, under the same grant, the road from Jacksonville to Lake City, 59 miles, the grant for which lacks 197,175.82 acres (counting the full quantity of 3,840 acres per mile) of being satisfied.

THE NORTH LOUISIANA AND TEXAS RAILROAD.

The grant to Louisiana for this road was made by the act of June 3, 1856, being similar in nearly all respects to the grants made to Alabama and Florida above referred to. Ninety-four miles have been constructed and officially reported by the company in accordance with the provisions of the granting act.

The amount of lands earned by the construction of 94 miles would be 360,960 acres; amount that could be legally disposed of in excess of lands earned, 76,800 acres; total, 437,760 acres. Amount patented or certified, 353,212.68 acres; difference, 84,547.32 acres. In fact, less lands were certified than were earned by the construction of 94 miles of road.

THE IOWA CENTRAL AIR LINE RAILROAD.

The grant for this road is fully explained in the beginning of this communication in connection with the Cedar Rapids and Missouri River Railroad grant, the latter company having received the benefit of, and been charged with, all the lands certified for the Iowa Central Air Line Company.

The foregoing statements must in the main be received as explanatory and approximate, as I cannot undertake now to pass upon many questions that have arisen, and that may hereafter arise, in an accurate adjustment of these several railroad grants.

It appears from the records of this office that at the commencement of the execution of the laws relating to land grants, no proper books of account were opened and no careful basis prepared upon which to proceed with the administration of the law. My more immediate predecessors, whether wisely or unwisely it is not for me to judge, preferred to carry on the current work of the office rather than enter upon such adjustment. I am informed, and believe, that the force allowed by Congress was inadequate for both. Nor is it adequate now for me to enter upon such work of adjustment without neglecting the current business of the division, which would be very injurious to parties interested.

Very respectfully,

N. C. McFARLAND,
Commissioner.

Hon. H. M. TELLER,
Secretary of the Interior.

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